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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,614	03/08/2001	Gerald Francis McBrearty	AUS9-2000-0935-US1	5324
J. B. Kraft 710 Colorado Street #5C Austin, TX 78701				
7590 01/26/2010				
EXAMINER				
DENNISON, JERRY B				
ART UNIT		PAPER NUMBER		
2443				
MAIL DATE		DELIVERY MODE		
01/26/2010		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERALD FRANCIS MCBREARTY,
SHAWN PATRICK MULLEN, JOHNNY MENG-HAN SHIEH, and
MICHAEL WILLIAM WORTMAN

Appeal 2009-006017¹
Application 09/801,614
Technology Center 2400

Decided: January 26, 2010

Before JAMES D. THOMAS, JEAN R. HOMERE, and STEPHEN C. SIU,
Administrative Patent Judges.

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Filed March 08, 2001. The real party in interest is International Business Machines Corp. (App. Br. 2.)

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 1, 4, 5, 7, 10, 13, 14, 17, 20, and 31 through 35. (App. Br. 2.) Claims 2, 3, 6, 8, 9, 11, 12, 15, 16, 18, 19, and 21 through 30 have been canceled. *Id.* We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm.

Appellants' Invention

Appellants invented a method and system for protecting computer files from unauthorized users. (Spec. 1, ll. 13-16.) As shown in Appellants' Figure 1, after backing up each of the computer data files (75, 76), a server (65) reviews any request for access to a backup file (70, 71) to determine whether the requester is authorized to access the requested file. (Spec. 4, ll. 1-4; 6, ll. 12-20.) As depicted in Figure 4, upon determining that the request constitutes an unauthorized intrusion, the server (65) destroys the requested back up file, and subsequently generates an uncompromised copy of the backup file using the original computer file corresponding thereto. (Spec. 10, ll. 12 - 25.)

Illustrative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

1. In a data processing operation having stored data in a plurality of data files, a system for protecting said data files from unauthorized users comprising:

means for storing for each of said plurality of data files, a backup file inaccessible to user requests;

means for receiving user requests for access to data files ;

means for determining, without accessing any of said backup files, whether said requests are unauthorized intrusions into said requested data files;

means responsive to an initial determination that a request is unauthorized for destroying the requested data files:
and

means for reloading a backup file for each destroyed file.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Winburn	2002/0069363 A1	Jun. 6, 2002
Moran	6,647,400	Nov. 11, 2003
Koelle	7,150,045	Dec. 12, 2006

KEITH A. POWELL, WINDOWS 98 HOW-TO 228 (Grace Buechlein ed., Sams Publishing 1998) (hereinafter "Powell").

Rejections on Appeal

The Examiner rejects the claims on appeal as follows:

1. Claims 1, 5, 7, 10, 14, 17, 31 and 33 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Winburn.
2. Claims 4, 13, 20, 32, 34, and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Winburn, Moran and Koelle.

Appellants' Contentions

Appellants contend that Winburn does not teach determining, without accessing a backup file, whether a request to access the file constitutes an intrusion upon the file, as recited in independent claim 1. (App. Br. 13-14, Reply Br. 1-2.) According to Appellants, Winburn's disclosure of creating identifiers from the contents of backup files requires accessing the backup files. (App. Br. 14, Reply Br. 2.) Thus, Appellants contend that the disclosed access of the backup files vitiates the requirement of determining whether the requested file has been intruded upon without accessing the file. (*Id.*)

Examiner's Findings

The Examiner finds that Winburn discloses first creating identifiers for backup files and corresponding current files, and subsequently comparing the backup file identifiers with the current file identifiers to determine if the backup file has been compromised. (Ans. 9.) The Examiner further finds that Winburn's comparison of the file identifiers only requires accessing the respective attributes of those files without accessing the files themselves. (*Id.* at 9-10.) Additionally, the Examiner finds that Winburn's disclosure of creating file identifiers prior to making the requests teaches that only such identifiers (not the files) are used during the comparison. (*Id.* at 11.)

II. ISSUE

Have Appellants shown that the Examiner erred in finding that Winburn teaches determining, without accessing a backup file, whether a request to access the file constitutes an intrusion upon the file, as recited in independent claim 1?

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence:

Winburn

1. Winburn discloses a method and system for protecting and recovering data files in a data processing system. (Para. [0004].)
2. After duplicating a protected data file currently in use to produce an in an authentic backup file, Winburn discloses camouflaging the current file's data and storing in a different location from that of the authentic backup data. (Abst.)
3. Winburn further discloses creating indicia for each of the current data files, as well as the backup data files. The created indicia represent their respective files, and they are stored in a recovery group address. (Abst., para. [0008].)
4. Winburn also discloses continually monitoring the current data files, and periodically comparing the indicia of such files with corresponding indicia of the back up files. (Para. [006].) Upon detecting an unauthorized change in a current data file, the back up file corresponding to the

compromised current file, as indicated by their respective indicia, is used to replace the corrupted file. (Para. [0006], [0008].) The corrupted data file is subsequently deleted. (Para. [0012].)

IV. PRINCIPLES OF LAW

Anticipation

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted).

“Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (citation omitted). “In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.” *Id.* (citation omitted).

Obviousness

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“‘On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary

indicia of nonobviousness.” (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998))).

V. CLAIMS GROUPING

Appellants argue the patentability of claims 4, 5, 7, 10, 13, 14, 17, 20, and 31 through 35 in conjunction with the rejection of independent claim 1. In accordance with 37 C.F.R. § 41.37(c)(1)(vii), these claims will stand or fall with representative claim 1.

VI. ANALYSIS

Anticipation

Independent claim 1 requires, in relevant part, determining, *without accessing a backup file*,² whether a request to access the file constitutes an intrusion upon the file. (App. Br. 17, Claims App’x.)

As set forth in the Findings of Fact section, Winburn discloses creating indicia that represent corresponding current and backup data files. (FF. 3.) Winburn also discloses storing the indicia in different locations from their respective data files. (FF. 4.) Additionally, Winburn discloses periodically comparing the indicia of the current files with those of the backup files to determine whether a current data file in use has been compromised. (*Id.*) If so, the compromised data file is destroyed and

² We note that the recitation “without accessing a backup file” was entered in the claim pursuant to the amendment filed on October 12, 2007. We reviewed Appellants’ original disclosure. However, we did not find support for such language.

replaced with a backup data file corresponding thereto. (*Id.*) We find that, by comparing the data files indicia instead of the actual data files in order to detect if a current file has been tempered with, Winburn implicitly teaches determining if the current data file has been intruded upon without accessing any of the data files. It follows that Appellants have not shown that the Examiner erred in finding that Winburn anticipates independent claim 1.

Obviousness

Regarding dependent claims 4, 13, 20, 32, 34, and 35, Appellants allege that they are patentable over the proffered combination since neither Moran nor Koelle cures the deficiencies of Winburn, as argued in their discussion of independent claim 1 from which these claims depend. (App. Br. 15.) As discussed above, we find no such deficiencies in Winburn for the cited secondary references to cure. It therefore follows that Appellants have not shown that the Examiner erred in finding that the combination of Winburn, Moran and Koelle renders claims 4, 13, 20, 32, 34, and 35 unpatentable.

VII. CONCLUSIONS OF LAW

1. Appellants have not established that the Examiner erred in rejecting claims 1, 5, 7, 10, 14, 17, 31 and 33 as being anticipated under 35 U.S.C. § 102.
2. Appellants have not established that the Examiner erred in rejecting claims 4, 13, 20, 32, 34, and 35 as being unpatentable under 35 U.S.C. § 103(a).

VIII. DECISION

We affirm the Examiner's rejections of claims 1, 4, 5, 7, 10, 13, 14, 17, 20, and 31 through 35.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2009).

AFFIRMED

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